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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 7

STATE OF MINNESOTA, PETITIONER,

vs.

GEORGE BLASIUS, RESPONDENT (DEFENDANT).

BRIEF OF THE RESPONDENT, GEORGE BLASIUS.

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BRIEF OF THE RESPONDENT, GEORGE BLASIUS.

I.

Statement of Case.

In addition to the statement of the case contained in the brief of the State of Minnesota, the defendant wishes to add the following:

Mr. Blasius, on May 1, 1929, was known as a trader at the stockyards at South St. Paul, Minnesota. He was a dealer in cattle buying and selling on commission and on order (R., p. 5, fol. 9). In the regular course of business the major portion of the cattle which the defendant bought was sold to non-residents of the State of Minnesota, and shipped to points outside the State (R., p. 6, fol. 10).

It is stipulated in this action that the cattle which Mr. Blasius owned on May 1, 1929, were cattle that were shipped from without the State and consigned to the South

St. Paul market for sale, purchased by Mr. Blasius and then sold and immediately shipped to points outside of the State (R., p. 6, fol. 10, p. 7, fol. 13); or they were shipped from points within the State, consigned to the market at South St. Paul, purchased by Mr. Blasius and shipped to points without the State.

The stipulation is clear that the eleven head of cattle in question were sold to non-residents and shipped to points outside of the State of Minnesota (R., p. 7, fol. 13).

It is further stipulated in this action that the yards of the St. Paul Union Stockyards Company, the defendant's place of business, is a place where thousands of head of livestock arrive daily by railroad and truck and are promptly sold and disposed of and moved to give place to other livestock that arrive in said yards from day to day.

II.

ARGUMENT.

Summary of Argument.

Since the facts in this case show that the cattle in question were in interstate commerce either before they reached the stockyards at South St. Paul or after they left said stockyards, or both before and after they were temporarily detained at South St. Paul, the only question to be determined is whether or not the interstate journey of the cattle was sufficiently interrupted by the temporary detention to subject them to local taxation. It is the contention of the defendant that the tax levied on said cattle is invalid and that the judgment of the Supreme Court of the State of Minnesota reversing the judgment of the lower court sustaining the tax should be affirmed for the following reasons:

A. A State has no power to tax property which is in transit among the States or which is the subject of commerce among the States.

B. The interstate journey of the cattle involved in the case before us was not sufficiently interrupted at the South St. Paul Stockyards to subject them to local taxation.

C. If the cattle were in interstate commerce the tax was a burden on such commerce.

A.

A State has no power to tax property which is in transit among the States or which is the subject of commerce among the States.

Property which is in transit in interstate commerce is immune from local taxation. There is, however, some confusion among the decisions as to the precise limit of the State's power in this respect. See:

Eureka Pipe Line Company v. *Hallahan*, 257 U. S. 265, 42 S. Ct. 101, 66 L. Ed. 227.

Carson Petroleum Company v. *Vial*, 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292.

Champlain Realty Company v. *Brattleboro* (1922), 260 U. S. 366, 43 S. Ct. 146, 67 L. Ed. 309, 25 A. L. R. 1195.

Hughes Bros. Timber Company v. *Minnesota* (1926), 272 U. S. 469, 47 S. Ct. 170, 71 L. Ed. 359.

26 R. C. L. "Taxation", Sec. 105.

Cooley "Taxation" 4th Ed., Sec. 381, p. 816.

Powell "Taxation of Things in Transit" (1920-1921), 7 Va. L. Rev. 167, 245, 429, 497.

B.

The interstate journey of the cattle involved in the case before us was not sufficiently interrupted at the South St. Paul stockyards to subject them to local taxation.

1. In cases involving the power of a State to tax goods which have been interrupted on an interstate journey it has

been held that an interruption of goods for purposes of inspection, weighing, grading, mixing and for storage or redistribution was enough to subject the property to local taxation.

Bacon v. *Illinois* (1913), 227 U. S. 504, 33 S. Ct. 299, 57 L. Ed. 615.

American Steel & Wire Company v. *Speed* (1904), 192 U. S. 500, 24 S. Ct. 365, 48 L. Ed. 538.

Susquehanna Coal Company v. *South Amboy* (1913), 228 U. S. 665, 33 S. Ct. 712, 57 L. Ed. 1015.

General Oil Company v. *Crain* (1908), 209 U. S. 211, 28 S. Ct. 475, 52 L. Ed. 754.

See also:

Myers v. *Baltimore County* (1896), 83 Md. 385, 35 Atl. 144.

Missouri Pac. R. Co. v. *Schnipper*, D. C., E. D. Ill. (1931), 51 Fed. (2d) 749.

In other cases involving the same proposition, most of which are more recent than the above, it has been held that where goods are in a constantly recurring and actually flowing stream of interstate commerce an interruption in the midst of such stream for the purpose of facilitating the flow does not subject the goods to local taxation.

Carson Petroleum Company v. *Vial*, 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292.

Champlain Realty Company v. *Brattleboro* (1922), 260 U. S. 366, 43 S. Ct. 146, 67 L. Ed. 309, 25 A. L. R. 1195.

Kelley v. *Rhoads*, 188 U. S. 1, 47 L. Ed. 359, 23 S. Ct. 259.

Hughes Bros. Timber Company v. *Minnesota* (1926), 272 U. S. 469, 47 S. Ct. 170, 71 L. Ed. 359.

Railroad Commission v. *Worthington,* 225 U. S. 101, 56 L. Ed. 1004, 32 S. C. R. 653.

Texas & N. O. R. Company v. *Sabine Tram Company,* 227 U. S. 111, 57 L. Ed. 442, 33 S. C. R. 229.

Swift v. *United States* (1905), 49 L. Ed. 518, 525, 196 U. S. 375, 398-9, 25 S. Ct. 276.

Stafford v. *Wallace* (1922), 66 L. Ed. 735, 258 U. S. 495, 42 S. Ct. 397.

Eureka Pipe Line Company v. *Hallahan* (1921), 257 U. S. 265, 42 S. Ct. 101, 66 L. Ed. 227.

Binderup v. *Pathe Exchange* (1923), 263 U. S. 291, 44 S. C. R. 96, 68 L. Ed. 308.

State v. *Blasius* (Minn. 1932), 245 N. W. 612.

See also:

17 Minn. L. Rev. 826.

In some of the above cases it was indicated that the test as to whether or not the goods were in transit was whether or not the interruption was to promote the same or convenient transit or to facilitate the flow of interstate commerce.

Hughes Bros. Timber Company v. *Minnesota* (1926), 272 U. S. 469, 47 S. Ct. 170, 71 L. Ed. 359.

It is the contention of the defendant that the interruption of the cattle in the case at bar was only incidental to the interstate journey and to promote and facilitate the safe and convenient transit. In the modern economic system large central markets for the sale and purchase of livestock for slaughter and feeding purposes are essential. They are essential to the business of the large packing houses as well as to the dealers and traders in the east and middle west who are continually purchasing cattle from the northwest for feeding purposes. The central market at the

South St. Paul Stockyards facilitates and is necessary to the conduct of this business.

Such a market is practically the only place where the producers of livestock can have a ready competitive cash market for their products. When the producer consigns livestock to the South St. Paul Stockyards he does not intend and there can be no intention that the stockyards is to be their final destination. The cattle are sent there for the purpose of finding a buyer to be then either slaughtered or continued on their journey. But in addition to this the very nature of the livestock itself requires that its journey from State to State be interrupted for feed and water, which is a part of the service performed in the stockyards.

The stockyards is operated by a public service corporation which provides yard space for the persons doing business therein, including the defendant. The defendant has no facilities for storing cattle indefinitely. Livestock may be kept on hand for a short period of time but in the regular course of business the great portion of it is disposed of very quickly to give way to the thousands of head arriving from day to day. In short there are no facilities whatever in the South St. Paul Stockyards for the defendant or any one else to permanently keep the livestock which is brought therein.

The detention of the cattle in the stockyards is similar to the interruption of the oil in the pipe lines in the case of *Eureka Pipe Line Company* v. *Hallahan*, 257 U. S. 265, 42 S. Ct. 101, 66 L. Ed. 227, where oil coming from without the State was transported in pipe lines, a portion of which was temporarily stored, and as to all of which the owner of the oil had the power to determine its destination.

It is similar to the interruption of the oil in the case of *Carson Petroleum Company* v. *Vial*, 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292, where the oil produced for export to

foreign countries was shipped to Point Rose, Louisiana, and temporarily stored there before the journey to the foreign country began, the destination of any particular lot of oil not being determined at the time it arrived at Point Rose.

It is similar to the interruption of the logs in the case of *Champlain Realty Company* v. *Brattleboro* (1922), 260 U. S. 366, 43 S. Ct. 146, 67 L. Ed. 309, 25 A. L. R. 1195, which were detained for a considerable time by a boom to await subsidence of high waters.

It is similar to the interruption of the sheep in the case of *Kelley* v. *Rhoads,* 118 U. S. 1, 47 L. Ed. 359, 23 S. Ct. 259, where the sheep were detained for several days for grazing purposes while being driven across several states.

It has already been pointed out that the business in the stockyards is a specialized economic activity facilitating the flow of interstate commerce; that because of the very nature of livestock it is necessary that the continuity of its journey be interrupted there so it may be sold, watered and fed. Therefore, it is submitted that this is a stonger case than the previous cases cited for a holding that there is continuity of journey, despite the detention at South St. Paul. This Court has definitely indicated that cattle in the stockyards are in interstate commerce and are to be regarded as in transit during their temporary detention in the stockyards.

In the case of *Stafford* v. *Wallace,* 66 L. Ed. 735, 258 U. S. 495, 42 S. Ct. 397, the court said:

> "The stockyards are not a place of rest or final destination. Thousands of head of livestock arrive daily by carloads and trainload lots and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the west to the east,

and from one state to another. Such transactions cannot be separated from the movement to which they contribute, and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not, in this aspect, merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to, its continuity. The origin of the livestock is in the west; its ultimate destination, known to, and intended by, all engaged in the business, is in the Middle West and East, either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce."

In the case of *Swift* v. *United States* (1905), 49 L. Ed. 518, 525, 196 U. S. 375, 398-9, 25 S. Ct. 276, the court said:

"* * * Commerce among the states is not a technical legal conception, but a practical one drawn from the course of business. When cattle are sent for sale from a place in one state, with the expectation that they will end their transit after purchase in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly, recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another state from that of the seller and that of the cattle."

In the case of *Hughes Bros. Timber Company* v. *Minnesota* (1926), 272 U. S. 469, 47 S. Ct. 170, 71 L. Ed. 359, the

following language was used in reference to the character of the interruption of the interstate journey of the logs involved in that case:

> "The delays in the continuity of movement were only incidental to the journey and necessary change in the mode of transportation by which the logs were carried from a place in one State to a place agreed upon in another."

It can be seen that the language used in this case involving the power of a State to tax goods in transit is very similar to and contains the same thought as the language used by the Court in the case of *Stafford* v. *Wallace,* 66 L. Ed. 735, 358 U. S. 495, 42 S. Ct. 397, and *Swift* v. *United States* (1905), 49 L. Ed. 518, 525, 196 U. S. 375, 398-9, 25 S. Ct. 276, as applied to cattle in stockyards.

2. It is noted that the cases of *Stafford* v. *Wallace,* 66 L. Ed. 735, 258 U. S. 495, 42 S. Ct. 397, and *Swift* v. *United States* (1905), 49 L. Ed. 518, 525; 196 U. S. 375, 398-9, 25 S. Ct. 276, involve the power of Congress over interstate commerce and not the power of a State over such commerce. And in both of these cases it is suggested that there may be a difference in the extent of power over interstate commerce granted to these two divisions of our Government. These two cases, however, are not directly cited as authority for the proposition that the tax is invalid but to sustain the argument that the cattle are in transit and in interstate commerce while they are in the stockyards at South St. Paul. If there is any difference in the limits of the powers of the State and the powers of Congress over interstate commerce such distinction should not affect the authority of those two cases on the particular point for which they were cited. If the cattle in the stockyards are to be regarded as in interstate commerce for purposes of

Federal regulation, we feel that they must necessarily be in interstate commerce for any other purpose, irrespective of the powers of the State or Federal Government over such commerce. The question then becomes whether or not the particular exercise of the State of Federal power is valid.

Furthermore, in the case of *Carson Petroleum Company* v. *Vial,* 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292, which involved the validity of an *ad valorem* duty on oil imposed by the State of Texas, the decision was based mainly on cases involving the power of the Federal government over interstate commerce such as *Texas & N. O. R. Company* v. *Sabine Tram Company,* 227 U. S. 111, 57 L. Ed. 442, 33 S. C. R. 229, and *Railroad Commission* v. *Worthington,* 225 U. S. 101, 56 L. Ed. 1004, 32 S. C. R. 653.

There is also definite language in both the Swift case and the Stafford case which indicates that the cattle in the stockyards are not sufficiently interrupted to subject them to local taxation. The following quotations from these two cases are admittedly *obiter dictum* and they are cited for whatever authoritative value they may have to show that the cattle in the stockyards are not only in interstate commerce for the purpose of Federal regulation but also to prevent them from being regulated or taxed by a State:

Swift v. *United States* (*supra*), 49 L. Ed. 518-525-6:

> "It should be added that the cattle in the stockyards are not at rest even to the extent that was held sufficient to warrant taxation in *American Steel & Wire Co.* v. *Speed,* 192 U. S. 500, 48 L. Ed. 538, 24 Sup. Ct. Rep. 365. But it may be that the question of taxation does not depend on whether the article taxed may or may not be said to be in the course of commerce between the states, but depends on whether the tax so far affects that commerce as to amount to a regulation of it."

Stafford v. *Wallace* (*supra*), 66 L. Ed. 735-746:

> "Moreover, it will be noted that even in tax cases, where the tax is directed against a commodity in an actual flowing and constant stream out of the state, from which the owner may withdraw part of it for use or sale in the state before it reaches the state border, we have held that a tax on the flow is a burden on interstate commerce which the state may not impose because such flow in interstate commerce is an established course of business. *United Fuel & Gas Co.* v. *Hallhan*, 257 U. S. 277, 66 L. Ed. 234, 42 Sup. Ct. Rep. 105. *Eureka Pipe Line Co. v. Hallahan*, 257 U. S. 265, 66 L. Ed. 227, 42 Sup. Ct. Rep. 101."

3. The case of *Bacon* v. *Illinois* (1913), 227 U. S. 504, 33 S. C. 299, 57 L. Ed. 615, is distinguishable from the case at bar. There the owner of grain which had been shipped from outside the state, removed it to his own private grain elevator where, for his own purpose, he stored it for inspection, weighing, cleaning, clipping, drying, sacking, grading and mixing. The grain was there held to be locally dealt with in the interest of the owner while it was in his custody and was subject to his complete disposition for collateral business purposes of his own. In other words, Bacon withdrew this grain from the flow of interstate commerce for his own private benefit. In the case at bar the defendant did not withdraw any of the cattle involved from their interstate journey. They were shipped to the stockyards and consigned to a commission company. The defendant in the regular course of business bought them for his own profit it is true, but also to facilitate their interstate commerce journey in order that they could be sold and re-shipped to points outside of the stockyards and outside of the State of Minnesota. The fact that title passes in the midst of the interstate journey does not necessarily make the property lose its interstate character.

East Ohio Gas Company v. *Tax Commission*, 75 L. Ed. 1171–75; 283 U. S. 465, 51 S. Ct. 499.

Stafford v. *Wallace*, 258 U. S. 495, 66 L. Ed. 735, 42 S. Ct. 397.

Eureka Pipe Line Company v. *Hallahan*, 257 U. S. 264, 66 L. Ed. 227, 42 S. Ct. 101.

In the American Steel & Wire Company case, 192 U. S. 500, 24 S. Ct. 365, 48 L. Ed. 538, merchandise was shipped from points outside the state to a distributing point in Memphis where they were placed in a warehouse and again sorted and allocated to destinations outside the State of Tennessee. Here again the owner of the merchandise withdrew the goods from their interstate commerce journey for an indefinite period of time and in its own warehouses (leased) and for its own private benefit. As to this case we refer again to the quotation from *Swift* v. *United States*, cited above, page 10.

In the case of *Myers* v. *Baltimore* (1896), 83 Md. 385, 35 Atl. 144, the facts are very similar to the case at bar. Nevertheless, the holding in that case was based on the fact that there was a wrongful assessment of the property (no notice having been given as provided by law), and although the court there did say that the cattle in the stockyards were sufficently interrupted for the purposes of State taxation, we submit that it cannot be used as authority in the instant case for the reasons that it was decided by a State court forty years ago at a time when interstate traffic in livestock had not reached the magnitude that it has today and before either the case of *Swift* v. *United States* (1905), 49 L. Ed. 518, 525, 196 U. S. 375, 398-9, 25 S. Ct. 276, or *Stafford* v. *Wallace*, 66 L. Ed. 735, 258 U. S. 495, 42 S. Ct. 397, had been decided.

In *General Oil Company* v. *Crain* (1908), 209 U. S. 211, 28 S. Ct. 475, 52 L. Ed. 754, the Oil Company maintained an establishment at Memphis, Tennessee, for the distribution of oil which was gathered from outside the State. The oil was stored in tanks from which it was put into smaller containers to be sold locally or in other states or to fill orders already received from customers in Arkansas, Louisiana, and Mississippi. In one tank only the oil which had already been sold on order in Arkansas, Louisiana, and Mississippi, was kept, while the local oil and that which had to be sold was kept in other tanks. The court held that this redistribution of the oil at Memphis subjected it to local taxation. Here again the Oil Company withdrew oil from its interstate commerce journey and stored it in its own tank and for its own purposes in conducting a local redistribution business. There was a very strong dissent in this case and in the case of *Carson Petroleum Company* v. *Vial*, 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292, the Court said that the Crain case should not be given the force claimed for it by the court below and by counsel for the State, and that since it (the Crain case) was decided "there has been a liberal construction of what is continuity of the journey, in cases where the court finds from the circumstances that export trade has been actually intended and carried through." Furthermore, it should be noted that in the Crain case there was a definite holding that in the situation there presented the oil was not in transit while it was being stored for redistribution at Memphis. In the case at bar, on the other hand, there has been a definite holding by this Court that cattle in the stockyards are in transit. *Stafford* v. *Wallace*, 66 L. Ed. 735, 258 U. S. 495, 42 S. Ct. 397.

The case of *Susquehanna Coal Company* v. *South Amboy* (1913), 228 U. S. 665, 33 S. Ct. 712, 57 L. Ed. 1015, followed the Crain case and the same principles apply.

C.

If the cattle were in interstate commerce the tax was a burden on such commerce.

We submit that if the cattle involved in the case at bar are in transit during their temporary detention at the stockyards at South St. Paul, that a direct property tax on them imposed by the State of Minnesota is a burden on interstate commerce. It may be true that indirect taxes imposed upon property which is the subject of interstate commerce may be permitted on the ground that they are not a burden. Nevertheless, where a direct tax is imposed on goods which actually are in transit, it is well settled that such a tax is a burden on interstate commerce.

Hughes Bros. Timber Company v. *Minnesota* (1926), 272 U. S. 469, 47 S. Ct. 170, 71 L. Ed. 359.

Carson Petroleum Company v. *Vial*, 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292.

See also:

Nashville C. & St. L. R. Co. v. *Wallace* (1933), 77 L. Ed. 444-450.

Conclusion.

It is therefore respectfully submitted that the decision of the Minnesota Supreme Court herein be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 7.—October Term, 1933.

The State of Minnesota, Petitioner, vs. George Blasius. } On Writ of Certiorari to the Supreme Court of the State of Minnesota.

[November 6, 1933.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Respondent, George Blasius, is a trader in livestock at the St. Paul Union Stockyards in South St. Paul, Minnesota. On May 1, 1929, he owned and had in his possession in these yards eleven head of cattle which were assessed for taxation as his personal property, under the general tax law of the State. In this action, brought to collect the tax, Blasius defended upon the ground that the cattle were in course of interstate commerce, and a part of that commerce, and were not subject to state taxation. The Supreme Court of the State, overruling the decision of the trial court, sustained this defense and this Court granted certiorari. 187 Minn. 420; 289 U. S. 717.

The material facts, as found by the trial court, are these: At the St. Paul Union Stockyards, thousands of head of livestock arrive daily by railroad and truck and are promptly sold and moved. The livestock comes from the State of Minnesota and other States throughout the northwest. The class of livestock which Blasius buys on the market are those that go immediately thereafter into the hands of feeders or growers within and without the State of Minnesota and principally beyond the borders of that State. He has not dealt in livestock for immediate slaughter. Thus, it was the practice of Blasius to go upon the market at the stockyards and buy livestock to meet the requirements of his trade, and in the regular course of his business practically all cattle purchased by him were sold and shipped to non-residents of the State, although selling and shipping to residents of the State did sometimes occur.

The eleven head of cattle in question came to the yards from some point outside the State of Minnesota; they had been con-

signed to commission firms for sale at the South St. Paul market; the consignors "had no intent to transport said cattle to any other place than South St. Paul, nor did they have any intent that such cattle should be transported to any particular place after their sale"; they were bought by Blasius from the commission merchants on April 30, 1929, and on May 1, 1929, the tax date, they were owned by him and "had not been entered with any carrier for shipment to any point," but were being offered for sale on the market; seven of the eleven head were sold on that day to a non-resident purchaser and were immediately shipped by the purchaser to points outside the State of Minnesota; the remaining four head were similarly sold and shipped on the following day. After his purchase Blasius placed the cattle in pens leased by him from the stockyards company; he paid for their feed and water up to the time of resale.

The court found that Blasius was not "subject to any discrimination in favor of cattle solely the product of the State of Minnesota"; that the assessment was made at the regular time and in the usual manner for taxation of personal property within the State; that the transportation of the cattle ceased after purchase from the commission men; that the cattle were not held by Blasius for the purpose of promoting their safe or convenient transit but were purchased and held by him because he desired to make a profit at their resale; that they were held at his pleasure and that he would sell to anyone, resident or non-resident, who was the highest bidder; that Blasius did not buy the cattle for the purpose of export or shipment to another State; and that after their purchase by him, and until he resold, the cattle were "at absolute and complete rest in the yards at South St. Paul" and "were a part of the general mass of cattle in the State and locally owned". The court also found that the cattle were "handled by the defendant as a part of the chain of title from the original producer thereof to the final consumer thereof", and that such handling was "a necessary factor in the center of chain of commerce from West to the East and South".

The dealings at the South St. Paul stockyards including the transactions of Blasius, as described in these findings, manifestly were so related to a current of commerce among the States as to be subject to the power of regulation vested in the Congress. Applying the cardinal principle that interstate commerce as con-

templated by the Constitution "is not a technical legal conception, but a practical one, drawn from the course of business," this Court said, in *Swift & Company* v. *United States*, 196 U. S. 375, 398, 399: "When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce". In that case, the question was as to the reach of the federal power through the prohibitions of the Anti-Trust Act of July 2, 1890, (26 Stat. 209) and these were held to apply to an attempt to monopolize commerce among the States by "a combination of independent dealers to restrict the competition of their agents when purchasing stock for them in the stockyards". On the same fundamental principle, the Court sustained the Packers and Stockyards Act of 1921 (42 Stat. 159) providing for the supervision by federal authority of the business of commission men and livestock dealers in the great stockyards of the country. *Stafford* v. *Wallace*, 258 U. S. 495.[1] It was in deference to these decisions that the state court denied validity to the tax here assailed. 187 Minn., p. 426.

But because there is a flow of interstate commerce which is subject to the regulating power of the Congress, it does not necessarily follow that, in the absence of a conflict with the exercise of that power, a State may not lay a non-discriminatory tax upon property which, although connected with that flow as a general course of business, has come to rest and has acquired a situs within the State. The distinction was recognized in *Stafford* v. *Wallace*, *supra*, pp. 525, 526, where the Court cited, as an illustration, the case of *Bacon* v. *Illinois*, 227 U. S. 504, in which such a non-discriminatory property tax was sustained. And the Court in the *Stafford* case quoted from the opinion in the *Bacon* case (*supra*, p. 516) the following statement of the distinction: "The question" (that is, as to the validity of the state tax) "it should be ob-

[1]See, also, Eureka Pipe Line Co. *v.* Hallanan, 257 U. S. 265; United Fuel Gas Co. v. Hallanan, 257 U. S. 277; Dahnke-Walker Milling Co. *v.* Bondurant, 257 U. S. 282; Lemke *v.* Farmers Grain Co., 258 U. S. 50; Hill *v.* Wallace, 259 U. S. 44, 69; Board of Trade *v.* Olsen, 262 U. S. 1, 37, 38, 41.

served, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority.".

The States may not impose direct burdens upon interstate commerce, that is, they may not regulate or restrain that which from its nature should be under the control of the one authority and be free from restriction save as it is governed in the manner that the national legislature constitutionally ordains. This limitation applies to the exertion of the State's taxing power as well as to any other interference by the State with the essential freedom of interstate commerce. Thus, the States cannot tax interstate commerce, either by laying the tax upon the business which constitutes such commerce or the privilege of engaging in it, or upon the receipts, as such, derived from it.[2] Similarly, the States may not tax property in transit in interstate commerce.[3] But, by reason of a break in the transit, the property may come to rest within a State and become subject to the power of the State to impose a non-discriminatory property tax. Such an exertion of state power belongs to that class of cases in which, by virtue of the nature and importance of local concerns, the State may act until Congress, if it has paramount authority over the subject, substitutes its own regulation.[4] The "crucial question", in determining whether the State's taxing power may thus be exerted, is that of "continuity of transit". *Carson Petroleum Co.* v. *Vial*, 279 U. S. 95, 101.

If the interstate movement has not begun, the mere fact that such a movement is contemplated does not withdraw the property from the State's power to tax it. *Coe* v. *Errol*, 116 U. S. 517;

[2]Robbins *v.* Shelby Taxing District, 120 U. S. 489; Fargo *v.* Michigan, 121 U. S. 230; Philadelphia and Southern Mail S. S. Co. *v.* Pennsylvania, 122 U. S. 326; Minnesota Rate Cases, 230 U. S. 352, 400; Pullman Co. *v.* Richardson, 261 U. S. 330, 338; Sprout *v.* South Bend, 277 U. S. 163; New Jersey Telephone Co. *v.* Tax Board, 280 U. S. 338; Anglo-Chilean Corporation *v.* Alabama, 288 U. S. 218.

[3]Coe *v.* Errol, 116 U. S. 517; Kelley *v.* Rhoads, 188 U. S. 1; Minnesota Rate Cases, 230 U. S. 352, 400, 401; Eureka Pipe Line Co. *v.* Hallanan, 257 U. S. 265; United Fuel Gas Co. *v.* Hallanan, 257 U. S. 277; Champlain Co. *v.* Brattleboro, 260 U. S. 366; Hughes Bros. Co. *v.* Minnesota, 272 U. S. 469; Carson Petroleum Co. *v.* Vial, 279 U. S. 95.

[4]Minnesota Rate Cases, 230 U. S. 352, 400, 402, *et seq.*

Diamond Match Co. v. *Ontonagon*, 188 U. S. 82. If the interstate movement has begun, it may be regarded as continuing, so as to maintain the immunity of the property from state taxation, despite temporary interruptions due to the necessities of the journey or for the purpose of safety and convenience in the course of the movement. *Coe* v. *Errol, supra*; *Kelley* v. *Rhoads*, 188 U. S. 1; *Champlain Company* v. *Brattleboro*, 260 U. S. 366. Formalities, such as the forms of billing, and mere changes in the method of transportation do not affect the continuity of the transit. The question is always one of substance, and in each case it is necessary to consider the particular occasion or purpose of the interruption during which the tax is sought to be levied. *Champlain Company* v. *Brattleboro, supra*, p. 377; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498; *Texas & N. O. R. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111; *Carson Petroleum Co.* v. *Vial, supra*. The mere power of the owner to divert the shipment already started does not take it out of interstate commerce if it appears "that the journey has already begun in good faith and temporary interruption of the passage is reasonable and in furtherance of the intended transportation". *Hughes Bros. Co.* v. *Minnesota*, 272 U. S. 469, 476.

Where property has come to rest within a State, being held there at the pleasure of the owner, for disposal or use, so that he may dispose of it either within the State, or for shipment elsewhere, as his interest dictates, it is deemed to be a part of the general mass of property within the State and is thus subject to its taxing power. In *Brown* v. *Houston*, 114 U. S. 622, coal mined in Pennsylvania and sent by water to New Orleans to be sold there in the open market, was held to have "come to its place of rest, for final disposal or use," and to be "a commodity in the market of New Orleans," and thus to be subject to taxation under the general laws of the State; although the property might, after arrival, be sold from the vessel on which the transportation was made for the purpose of shipment to a foreign port. As the Court said in *Champlain Company* v. *Brattleboro, supra*, p. 376, the coal in *Brown* v. *Houston* "was being held for sale to anyone who might wish to buy". A similar case is *Pittsburgh & Southern Coal Co.* v. *Bates*, 156 U. S. 577. In *General Oil Company* v. *Crain*, 209 U. S. 211, the company conducted an oil business at Memphis